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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
Applications for Consent)	
to the Transfer of Control of Licenses)	
Section 214 Authorizations from)	CC Docket 98-141
)	
AMERITECH CORPORATION,)	
Transferor)	
)	
to)	
SBC COMMUNICATIONS INC.,)	
Transferee)	

**COMMENTS OF CORECOMM NEWCO, INC.
IN OPPOSITION TO APPLICATION FOR TRANSFER OF CONTROL**

Dated: October 15, 1998

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TABLE OF CONTENTS

SUMMARY	iii
INTRODUCTION	2
I. SBC's Acquisition of Ameritech Will Expand The Reach of a Corporate Culture That Is Totally Resistant to Competition And Will Exacerbate The Problems That CLECs Have Had in Bringing Competition to The Ameritech Region	3
A. Ameritech Has Failed to Cooperate with CLECs Seeking to Enter Its Markets ..	3
B. SBC's Attempts To Thwart The Development of Competition in Texas	5
C. SBC's Takeover of PacTel Has Resulted in A Deterioration of Service For Both Competitors and Consumers.	7
D. SBC Would Likely Dominate the Merged Entity	11
II. SBC's Claim that the Merger Will Enable It To Pursue a National Strategy of Local Competition Out-of-Region Is Not Credible.	12
A. SBC-Ameritech is not likely to compete against other ILECs except in market segments where competition already exists.	12
B. SBC has not shown that it needs to merge in order to obtain the resources to compete out-of-region.	14
III. While Conditions to Merger Approval Are Not an Effective Means to Alleviate Anti-Competitive Effects, If the Commission Ultimately Determines to Approve the Merger, Approval Should be Contingent Upon the Imposition and Implementation of Stringent, Pro-Competitive Conditions and Sanctions for Failure to Meet those Conditions.	16
A. Post-merger conditions are not an effective means of resolving the anti-competitive concerns raised by this merger.	16
B. If the merger is approved, market-opening conditions should be attached, with effective sanctions for non-compliance.	18
CONCLUSION	22

SUMMARY

In addition to the legitimate concerns that arise in considering the proposed union of two of the nation's largest dominant local exchange carriers, the Commission should not overlook the anti-competitive effects that would result by spreading SBC's "stonewall" corporate culture to the Ameritech region, an area in which Ameritech's already dismal performance in facilitating competitive entry has left it with virtually the same market share that it held before the Telecommunications Act of 1996 mandated local exchange competition. SBC has a long history of anti-competitive practices, and PacTel's competitive record has changed for the worse since SBC took over. There can be no doubt that SBC management will dominate the combined company, and bring with it a hardened attitude toward competition in the Ameritech region.

The asserted public benefit of the merger lies in the claim that the combined companies will bring serious competition for the first time to the local exchange market, by competing in each other's home region as well as in the home regions of the other incumbent ILECs. Yet when two firms dominate a market, they are not likely to attack each other's market share, out of fear that the other will retaliate and in the ensuing battle neither side will gain sufficiently to offset the risk and expense of the fight. In those market segments where additional competition is most needed – such as the residential and small business markets – the most likely scenario is that the two giants will find it less risky and much more profitable to arrive at a tacit mutual non-aggression pact, each sitting on its own dominant market share and leaving the other undisturbed.

Moreover, SBC and Ameritech already have sufficient financial and managerial resources to compete in the local markets out-of-region. Indeed, Ameritech has already made one serious competitive foray into the St. Louis market, where it has significant brand-name recognition and a

large customer base. Both Ameritech and SBC have also planned other out-of-region competitive initiatives. The merger would have the anti-competitive effect of removing each company as a potential competitor in the other's region.

It has been suggested that the merger should be approved with conditions. This approach would be ineffective. Merger conditions have been ignored in the past, and once the merger is approved, effective enforcement of the conditions would be extraordinarily difficult. In the event, however, that the merger is approved, we set forth the conditions that are essential.

Finally, the Commission should inspect the applicants' Hart-Scott-Rodino documents, and hold a hearing. Particularly in a case where corporate intent and capabilities with respect to potential market entry are an issue, the Commission must conduct a factual inquiry. It is not bound by the applicants' self-serving statements with respect to their pre-merger competitive plans, but must inspect internal documents and subject the applicants to discovery and cross-examination.

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CoreComm Newco, Inc. ("CoreComm") respectfully submits these comments in opposition to the transfer of control from Ameritech Corporation ("Ameritech") to SBC Communications Inc. ("SBC"). CoreComm has been offering residential service in Ohio since March 11, 1998, through the resale of service obtained through an interconnection agreement with an Ameritech subsidiary. CoreComm and its affiliates have certification applications pending in numerous other states, and expect to receive CLEC certification in a majority of states by the end of this year. CoreComm and its affiliates expect to provide service not only through the resale of service provided by Ameritech and other incumbent LECs, but also through the use their own facilities in conjunction with the use of unbundled network elements provided by Ameritech and other incumbent LECs.

INTRODUCTION

This merger, in combination with the proposed Bell Atlantic-GTE merger, is immensely significant. The two mergers will irrevocably alter the future of the local exchange market in this country, bringing a degree of concentration that has not been seen since the break-up of the old AT&T. SBC already controls more than 33 million access lines.¹ After the merger, it would control more than 53 million access lines, more than one-third of the access lines in the country.² Bell Atlantic has nearly 40 million access lines.³ After its merger with GTE, the combined company would have 63 million access lines.⁴ SBC-Ameritech and Bell Atlantic-GTE together would control some 116 million access lines, about 75% of the access lines in the country. Only the most compelling public benefits could justify such an extreme concentration of economic power. In fact, the applicants' case of public benefits is weak; and balanced against it are grave dangers to competition.

It has been said that "[t]he local phone companies have figured out that it is better for their shareholders to combine with each other than to accept the risks and the expense of getting into price

¹ SBC Communications, Inc., Form 10-K filed March 13, 1998, at p. 5.

² Ameritech has 20.5 million access lines. Ameritech Corp., Form 10-K filed March 13, 1998, at p. 2. The total number of access lines (qualified USF loops) as of 7/1/97 is reported as 154.5 million. FCC Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service (Feb. 1998) at Table 8.2, pp. 112-14 and Fn. A. The combined SBC-Ameritech would control half the nation's business lines. *European Regulators Signal Clear Path for SBC-Ameritech Deal*, Dow Jones Online News (July 23, 1998).

³ See Bell Atlantic Investor Information, <http://www.bell-atl.com/invest/profile/telecom.htm> (visited Oct. 7, 1998).

⁴ "Bell Atlantic and GTE Agree to Merge," News Release, July 28, 1998, <http://www.ba.com/nr/1998/Jul/1998072800.1.html> (visited Oct. 7, 1998)

wars, building new facilities and providing lots of new services through their networks."⁵ It is time for the Commission to make it clear that the merger route is no longer an acceptable means for the Bell giants to obtain new customers. If they are to expand significantly, it must be through competition, not acquisition.

I. SBC's Acquisition of Ameritech Will Expand the Reach of a Corporate Culture That Is Totally Resistant to Competition and Will Exacerbate the Problems That CLECs Have Had in Bringing Competition to the Ameritech Region

It goes without saying that CLECs cannot bring the benefits of competition to any region, whether by resale or use of their own facilities, without the cooperation of the incumbent LEC: that is the premise of the Telecommunications Act of 1996. Resellers are wholly dependent upon the timely provisioning of service and repairs by the incumbent. Facilities-based carriers, by purchasing unbundled network elements and interconnecting with the incumbent, are likewise held hostage to the incumbent's provisioning efforts. It has been CoreComm's experience that Ameritech's performance has severely impeded CoreComm's entry efforts in Ohio; based upon SBC's record in its region, if the merger is allowed, market penetration by CLECs in Ameritech's region will become even more difficult.

A. Ameritech Has Failed to Cooperate with CLECs Seeking to Enter Its Markets

As a reseller, CoreComm is dependent upon Ameritech to install service for CoreComm's customers. Evidence presented by CoreComm before the Public Utility Commission of Ohio ("PUCO") shows, however, that Ameritech's record on meeting PUCO's requirement of install date

⁵ "Giant Telecom Deal Bets Against Free-For All Theory – SBC Strategy involves Grabbing As Many Local Users As Possible," The Arizona Republic, May 12, 1998 at A2, 1998 WL 7770971, quoting Ken McGee of the Gartner Group, Inc.

within five days is dismal – it misses at least 15% of the time.⁶ Attachment A, an August 26, 1998 letter to Mr. Cox of Ameritech from CoreComm⁷ details many service problems that have been experienced by CoreComm. All of these problems had been communicated to appropriate Ameritech representatives before the letter was sent.

The problems set forth in the letter include the regular assignment of due date which are not in compliance with the PUCO's Minimum Telephone Service Standards' five day requirement, conflicting statements about the reasons when Ameritech rejects orders, errors by Ameritech in rejecting proper orders, errors in not addressing improperly rejected orders, lengthy time periods in Ameritech's acknowledgment of orders and the assignments of due dates, providing customer records or updates in an untimely fashion, no notice about postponement of facilities that have been ordered, necessity of CoreComm monitoring the Ameritech processes because so many Ameritech errors and failures to meet due dates and very disturbingly, anti-competitive comments by Ameritech personnel to CoreComm customers.

Subsequent to August 26, 1998, several more examples of Ameritech's anti-competitive behavior have been reported. In one instance, a customer wishing to switch to resold service from CoreComm recently called Ameritech's residential business office to inquire about the status of her order and the current delivery of her local service. In responding to this customer, an Ameritech employee made highly derogatory comments about the services delivered by CoreComm, claiming

⁶ Presentation of Pam Miller at the Informational Forum on the SBC/Ameritech Merger before the Public Utility Commission of Ohio, August 26, 1998, Tr. at page 13.

⁷ The letter is signed on behalf of Cellular One, a trade name that CoreComm used until recently.

that it was not a legitimate company and that it was trying to switch her service in an unauthorized manner. (CoreComm has been advised by Ameritech that the employee was subsequently disciplined for these statements.)

Yet another time, when CoreComm's sister company, Digicom, Inc., another CLEC, attempted to order service for one of its customers, it was given an in-service date of approximately two weeks; when the same customer called Ameritech, the customer was promised the same service in one week. Given this uneven level of "support" for its wholesale customers, it is not at all surprising that Ameritech has to date lost very little of its market share for local exchange service to CLECs.

Finally, a CoreComm customer called last month to report a loss of dial tone on her local service. CoreComm placed a repair order with Ameritech, only to find that Ameritech had mistakenly switched the customer to another carrier's service. While these are Ameritech errors, they ultimately affect the customers' perception of how CoreComm and other CLECs provide local service.

B. SBC's Attempts To Thwart The Development of Competition in Texas

In his affidavit filed in support of the merger application, Stephen Carter states that "SBC is committed from the highest levels of the company to open its local networks to enable others to enter the local exchange telecommunications markets in which SBC operates." Carter Affidavit at 3. Unfortunately, SBC's asserted corporate "commitment" has not translated into an open entry policy in the real world, as evidenced by the obstacles SBC has erected to constrain local competition in Texas.

When SWBT filed its draft Section 271 application with the Texas PUC, carriers attempting to enter Texas local exchange market presented substantial evidence of the difficulties they regularly encountered in working with SWBT to interconnect their networks, purchase unbundled elements and provide resale. The testimony revealed SWBT's corporate policy of fighting CLECs "tooth and nail" on every conceivable issue, even issues that the PUC had previously decided in favor of other CLECs. This evidence prompted the following comments from the Commissioners:

Commissioner Walsh: The record is replete with examples of Southwestern Bell's failure to meaningfully negotiate, reluctance to implement the terms of the arbitrated agreements, lack of cooperation with customers and evidence of behavior which obstructs competitive entry.

Commissioner Curran: Here we have a situation where potential competitors have spent enormous time and effort and probably enormous sums of money attempting to gain a foothold in the local telephone market. The regulatory agency has spent untold hours in an effort to establish mechanisms under which the phone customers of Texas will have a choice in their local phone service, and this enormous effort has resulted in a movement of just 1 percent of phone customers to competitors. I don't believe the record supports the explanation that this is the result of a lack of interest, either on the part of consumers or on the part of potential competitors.

Currently, there are CLECs with de minimis customers, and even those de minimis customers have been secured only with tremendous efforts and with Bell resisting at every turn. Will these CLECs and other CLECs be able to retain even this level of customer base into the future, much less to provide a real competitive alternative to additional subscribers? Under current practice, it is highly doubtful.

Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market, Project No. 16251, Tr. 187, 202, 203-204 (May 21, 1998).

At the conclusion of the hearings on SWBT's draft 271 application, the PUC wisely observed that "SWBT needs to change its corporate attitude and view [CLECs] as wholesale customers. . . . SWBT needs to show this Commission and participants during the collaborative process by its actions that its corporate attitude has changed and that it has begun to treat CLECs like

its customers. . . ." *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Project No. 16251, Commission Recommendation, at 2. The PUC's assessment of SWBT's corporate attitude toward competition, which was based on substantial evidence of SWBT's efforts to delay and restrain the entry of competitors into its monopoly local exchange market in Texas, cannot be reconciled with SBC's representations to this Commission of its open-armed embrace of competition and its purported efforts to enable competitive entry.

C. SBC's Takeover of PacTel Has Resulted in A Deterioration of Service For Both Competitors and Consumers.

In his affidavit in support of the merger, Mr. Carter states that "SBC's record in opening its networks in the Southwestern Bell, Pacific Bell and Nevada Bell areas demonstrates SBC's commitment to its obligations under the 1996 Act. That has been the case with our merger with Pacific Telesis and there is no reason to expect it will be any different with Ameritech." (Carter Affidavit at 15.) As demonstrated above, SBC's record in opening its network in Southwestern Bell's territory reflects anything but a commitment to comply with its obligations under the Act. Moreover, since SBC acquired Pacific Bell in April 1997, the infiltration of the SBC corporate culture has had a negative impact on competition and consumer service in California. If, as Mr. Carter states, there is no reason to expect that things will be any different with Ameritech, the Commission should not approve the merger.

1. SBC Has Caused Pacific Bell to Take an Anti-Competitive Position on an Issue Where Ameritech Took a Pro-Competitive Position

AirTouch Communications, a wireless provider, provided a striking example of SBC's efforts to nullify Pacific Bell's pro-competitive undertakings after it took control. According to

Comments filed with the Public Utilities Commission of Ohio,⁸ Pacific Bell had informed AirTouch that it could purchase the billing and collection services needed to implement its Calling Party Pays ("CPP") program out of the Pacific Bell tariff. CPP is a billing option AirTouch offers to its wireless customers, pursuant to which the calling party, rather than the wireless customer, is billed for calls placed to wireless customers. By allowing wireless customers to avoid the charges for incoming calls, CPP reduces the cost of wireless service and makes it more economical for customers to leave their phones on at all times to receive incoming calls. The availability of CPP goes a long way toward making wireless service a substitute for, rather than merely a complement to, wireline service, thereby increasing the competitive choices accessible to consumers. An essential element for the deployment of CPP, however, is a billing and collection agreement with the incumbent LEC.

Prior to SBC's acquisition of Pacific Bell, AirTouch had negotiated a market trial for CPP in California pursuant to which Pacific Bell had agreed to provide a number of services, including billing and collection, necessary for implementation of the trial. Within weeks of SBC's acquisition, Pacific Bell stopped working with AirTouch and eventually told AirTouch that it was no longer interested in pursuing the market trial. SBC later informed AirTouch that it could not use Pacific Bell's tariffed billing and collection services to provide CPP. As a result, AirTouch was forced to file a complaint with the California Public Utilities Commission to compel Pacific Bell to honor the terms of its tariff.⁹

⁸ *In the Matter of the Joint Application of SBC Communications, Inc., SBC Delaware, Inc. and Ameritech Ohio for Consent and Approval of a Transfer of Control*, Case No. 98-1082-TP-AMT, Comments of AirTouch Communications, filed September 4, 1998.

⁹ AirTouch Comments at 7-8; *AirTouch Cellular v. Pacific Bell*, Case No. 97-12-044 (Cal. PUC, filed December 23, 1997).

In the BellSouth Louisiana 271 decision, the Commission noted that while wireless providers are positioning their service offerings to become competitive with wireline service, they are still in the process of transitioning from a complementary service to a competitive equivalent to wireline service.¹⁰ SBC's refusal to allow Pacific Bell to provide AirTouch the billing and collection services necessary to implement CPP is clearly designed to impede the development of wireless services as a commercial and competitive alternative to Pacific Bell's wireline service.

According to AirTouch, it currently has billing and collection agreements with Ameritech that allow it to offer CPP. If SBC's acquisition of Ameritech is approved, AirTouch is rightfully fearful that its experience with Pacific Bell in blocking its ability to provide CPP will be repeated in the Ameritech states. SBC's blatant use of its monopoly power to squelch competition is in significant contrast to the position taken by Ameritech on this important competitive issue, and is an illustration of the competitive harm that would ensue if the SBC management attitude takes over Ameritech.

2. Consumer Dissatisfaction With Local Service in California Has Grown Under SBC's Management

Since SBC's acquisition of Pacific Bell, numerous complaints have been filed relating to its business practices and customer service policies. In an Order Instituting Rulemaking released on June 18, 1998, the California Commission noted that formal and informal customer complaints about deteriorating telephone service had proliferated in the last year, prompting it to open an investigation on service quality standards. *Order Instituting Rulemaking on the Commission's Own Motion into*

¹⁰ *Application of BellSouth Corporation, et al. Pursuant to section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in Louisiana*, 13 FCC Rcd 6245, at ¶73 (1998).

the Service Quality Standards For All Telecommunications Carriers and Revisions to General Order 133-B, R.98-06-029 (Cal. PUC, June 18, 1998). SBC had assumed control of Pacific Bell just over a year before the release of the Commission's Order.

Even Pacific Bell's own employees recently filed a complaint with the California Commission alleging that SBC had implemented an aggressive, irresponsible and deceptive sales policy, emphasizing sales over service and customer satisfaction. *Telecommunications International Union, International Federation of Professional and Technical Engineers, AFL-CIO v. Pacific Bell and SBC*, filed June 18, 1998 with the California Public Utilities Commission.

The Utility Consumers Action Network ("UCAN"), a San Diego-based consumer watchdog group, has filed numerous complaints against Pacific Bell alleging that residential service has deteriorated significantly under Southwestern Bell's stewardship. Examples of service deteriorations cited by UCAN include Pacific Bell's closure of public offices, which has a disproportionate impact on low income and elderly customers who use the offices to pay bills, reinstate service or interact on a face to face basis with Pacific Bell employees¹¹; and Pacific Bell's allegedly deceptive and misleading marketing campaigns for Caller ID and related services.¹²

¹¹ UCAN March 23, 1998 Protest of Pacific Bell Advice Letters 19291 and 19294 -Office Closures.

¹² *The Utility Consumers's Action Network v. Pacific Bell (U-1001-C)*, C. 98-04-004 (Cal. PUC, filed June 2, 1998).

D. SBC Would Likely Dominate the Merged Entity

Following SBC's acquisition of Pacific Telesis, 22 of PacTel's 35 top executives exercised their golden parachutes and left the company.¹³ According to press reports, Ameritech's top five executives also have golden parachutes that would allow them to leave the company post-merger with very attractive financial packages.¹⁴ Thus, if the merger is approved, it is more than likely that it will be SBC's current management that will control approximately 35% of the nation's local access lines and will oversee the provision of local telephone service in 13 states. In determining whether approval of the merger will serve the public interest, the Commission must take into account the demonstrated propensity of SBC's current management to fight and delay the entry of competitors into its existing monopoly markets. To the extent that SBC is able to expand the number of markets it controls through the acquisition of Ameritech, it will be able to expand the reach of its "stonewall" corporate culture to suppress the development of competition in a manner that completely frustrates the intent of Congress in passing the Telecommunications Act of 1996.

Unfortunately, SBC's "stonewall" corporate culture may achieve the desired effect of keeping some competitors away. Shortly after the merger was announced, the CEO of a Chicago-based CLEC explained that "[w]e're not in the SBC service area primarily because of the perception that

¹³ Poling, "SBC, Ameritech Are Contrasts In Style," *The Orange County Register*, May 12, 1998, C3, 1998 WL 2627981 ("PacTel chairman and chief executive Phil Quigley stayed with the company just nine months after his company merged into SBC before leaving with his \$10 million golden parachute.").

¹⁴ *Id.*; Keller, "Growing Up: SBC Communications To Acquire Ameritech In a \$55 Billion Deal," *The Wall Street Journal*, May 11, 1998, A1, 1998 WL-WSJ 3493498.

they are one of the least open to competitive local service carriers."¹⁵ It would be a clear detriment to competition to bring Ameritech's region under SBC's management philosophy. The Congressional goal of opening the telecommunications markets to competition and making available to consumers a choice of local telephone service providers would be realized more rapidly if new entrants could devote their resources to constructing networks, developing innovative products and marketing their services to customers rather than to litigating to obtain what they are entitled to under the Communications Act. The more local markets that SBC controls, the more money competitors will be forced to spend to enforce their rights to gain access to the incumbent's networks on reasonable and nondiscriminatory terms.

II. SBC's Claim that the Merger Will Enable It To Pursue a National Strategy of Local Competition Out-of-Region Is Not Credible.

A. SBC-Ameritech is not likely to compete against other ILECs except in market segments where competition already exists.

SBC's principal claim of public benefit is that the merger is necessary to enable it to pursue a national strategy of entering out-of-region local exchange markets. That claim is not credible, for several reasons.

The claim assumes that in order to be large enough to compete in out-of-region local market, an ILEC must be so large that it controls, as SBC-Ameritech would do, one-third of the access lines in the country. If that premise is correct (and we show below that it is not), then the end point of SBC's argument is a telecommunications market dominated by two or three mega-ILECs. Indeed,

¹⁵ "A Baby Bell Tolls for Ameritech: Tough SBC Will Cut Costs, Staff, Units," Crain's Chicago Business May 18, 1998 at 1, quoting Robert Taylor, CEO of Focal Communications Co.

with the proposed merger of Bell Atlantic and GTE, that is exactly where this merger will take us. And if these mergers take place, it is hard to believe that the remaining ILECs will remain independent for long.

Economic theory teaches that two or three giant companies, each with approximately 1/3 of the market, are likely to find ways to collude. Even without explicit collusion, the parties can arrive at a tacit mutual non-aggression pact, as each realizes that attempting to steal customers from the other will lead to retaliation, which will in turn precipitate an expensive competitive fight causing losses to both sides.

Indeed, the merger may lessen, rather than enhance, the chances that the ILECs will ever compete against each other in markets where significant competition has not otherwise developed. The merger of SBC and Ameritech, in combination with the merger of Bell Atlantic and GTE, will reduce the number of significant ILECs from six to four, and may well lead to further combinations. That, in turn, will enhance the chances of tacit agreement not to compete in each other's region. "[A]s the number of firms increases, collusive agreements are more difficult to police, and the frequency of cheating and noncooperative behavior increases." Samuelson and Nordhaus, Economics (16th ed.) at 176. By countenancing a progressive reduction in the number of ILECs, the Commission is simply increasing the chances that each will be content, in those segments of the market where non-ILEC competition has not been successful, simply to sit on their own dominant market shares and refrain from expensive and risky retaliatory fights with the other ILECs.

SBC's own description of its plan for out-of-region local competition confirms what economic analysis suggests – that the mega-ILECs will not be likely to compete with each other in

markets that are not already competitive. SBC admits that the primary focus of its strategy is "the thousand largest companies in the United States," particularly those with principal offices within SBC's region which are already taking service from SBC. Kahan Aff't ¶ 30.¹⁶ "The core of the National-Local Strategy is the conclusion that SBC must develop the capability to compete for the business of large national and global customers both in-region and out-of-region." Kahan Aff't ¶ 13. But the market for larger business customers, while still dominated by incumbent LECs, is the part of the local exchange market that is in the least need of additional competitors. As the Commission has found, "there are a large number of firms that actually compete or have the potential to compete in this market." Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Dkt. No. 97-211, Memorandum Opinion and Order (rel. Sep. 14, 1998), ¶ 173. While additional competitors are free to enter this market, the pro-competitive benefit of an additional competitor in this market is not such as to justify the anti-competitive effects of this merger in other markets.

B. SBC has not shown that it needs to merge in order to obtain the resources to compete out-of-region.

SBC is already a huge company. It has approximately 33 million access lines. It serves the nation's two most populous states, California and Texas, as well as 7 of the country's 10 largest metropolitan areas.¹⁷ Its 1997 revenues were \$24.8 billion (\$26.8 billion if SNET's 1997 revenues

¹⁶ We note that at other parts of its presentation, SBC analyzes its strategy in terms of targeting the Fortune 500 companies. Carlton Aff't ¶¶ 25-29 and Table 1.

¹⁷ SBC Communications, Inc., Form 10-K filed March 3, 1998, "Business Operations."

are added), and its 1997 operating income was over \$3 billion.¹⁸ Its revenues and net income are already comparable to the companies it claims it must compete with. SBC Brief at 53 n.67.

SBC says that its first realization of the need to become larger was the announcement of the MCI/WorldCom merger; at that point, SBC says, it realized that it had to compete with companies of that size for the business of its large corporate customers, both within and without its region. Kahan Aff. ¶ 10. But SBC has already achieved the size of MCIWorldCom; its revenues are at about the same level as MCIWorldCom's, and its net income is higher. Moreover, it has far more managerial and technical experience in local exchange markets. In terms of financial and managerial resources, there is no reason why SBC cannot start competing with MCIWorldCom (and other companies of similar size) without any further mergers.

Moreover, SBC presents a powerful argument for why it will have to compete for local business outside its region even without the merger. SBC argues that in today's more competitive environment, if it and Ameritech do not follow their current large business customers to out-of-region locations, other competitors will take their in-region business from these customers. Kahan Aff. ¶ 10. These customers represent the "profitable core" of SBC's business. Brief at 49. With competitive carriers such as MCIWorldCom attacking its high-end corporate business, SBC says it concluded that a strategy confined to its own region was "no longer viable for SBC." Kahan Aff. ¶ 22. As SBC explains, "[w]e cannot remain idle while our competitors capture the huge traffic volumes generated by a relatively small number of larger customers." Kahan Aff't ¶ 13. Rather than lose its large business customers to "financially strong, technically capable, fully integrated national

¹⁸ SBC Communications, Inc., 1997 Annual Report at 31.

and global competitors," SBC states that it has decided to become one of those competitors. Kahan Aff. ¶ 23.

But since SBC alone is already comparable in size to the competitors it says are threatening its core business, it will have to counterattack by competing for large business customers out-of-region regardless of whether it merges. SBC and Ameritech already have sufficient financial and managerial resources to compete in the local markets out-of-region. Indeed, Ameritech has already made one serious competitive foray into the St. Louis market, where it has significant brand-name recognition and a large customer base. Both Ameritech and SBC have also planned other out-of-region competitive initiatives. The merger would have the anti-competitive effect of removing each company as a potential competitor in the other's region.

III. While Conditions to Merger Approval Are Not an Effective Means to Alleviate Anti-Competitive Effects, If the Commission Ultimately Determines to Approve the Merger, Approval Should be Contingent Upon the Imposition and Implementation of Stringent, Pro-Competitive Conditions and Sanctions for Failure to Meet those Conditions.

A. Post-merger conditions are not an effective means of resolving the anti-competitive concerns raised by this merger.

The severe competitive concerns raised by creating a company controlling a third of all the access lines in the country are unlikely to be resolved by approving it subject to the satisfaction of post-merger conditions. For example, post-merger conditions cannot address the effect of the merger in stifling any incentive on the part of either company to compete in each other's region. And if the Bell Atlantic-GTE merger is also approved, there is no set of post-merger conditions that can remove the incentive the two giant companies would have not to compete with each other, out of fear of the consequences of retaliation. And post-merger conditions cannot address the problem raised by spreading the reach of SBC's "stonewall" corporate culture into Ameritech's region.

Moreover, there is considerable question whether post-merger conditions would prove to be enforceable. For example, there are already charges that the BA-NYNEX merger conditions have not been complied with. As MCI explained earlier this year in a Complaint filed with this Commission, "Bell Atlantic previously failed to comply with the Merger Order, and continues to do so, through its failure to price unbundled network elements based on forward-looking economic costs. . . . Bell Atlantic has now compounded its complete disregard for the critical market-opening provisions in the Commission's Merger Order by refusing to negotiate in good faith to develop adequate performance standards, remedies, and associated reporting."¹⁹ Once the merger is consummated, it will be impossible to undo as a practical matter. And given the enormous stake the combined company will have in preserving its within-region local exchange monopoly, it will be motivated to violate the post-merger conditions for as long as possible, even if compliance orders and fines result.

Thus, if this merger is to be approved and the public interest is to be preserved, SBC and Ameritech must be made to comply with conditions *prior to consummation of the transaction*. Perhaps the most effective means of ensuring that the new SBC-Ameritech giant cannot engage in anticompetitive conduct against smaller new entrants is to make sure that the company is already permitting effective competitive entry into the SBC and Ameritech regions. Specifically, the Commission should require that SBC and Ameritech demonstrate – prior to becoming a single entity – that they have satisfied the fourteen point competitive checklist set forth in section 271 of the Act in each state within their regions. Such a condition would provide much-needed safeguards against

¹⁹ Complaint of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., File No. E-98-32 (filed Mar. 17, 1998).

an abuse of market power by this new local exchange service giant, and furnish the additional incentives necessary to induce the combined company to take steps in opening all of its markets to competition.

In connection with this effort to ensure that effective competition takes root in the SBC and Ameritech regions before the companies merger, the Commission should also require SBC and Ameritech to provide greater discounts on resold services and prices for unbundled network elements that truly comply with the methodology set forth in the *Local Competition Order*. Similarly, the Commission should demand that the SBC and Ameritech provide technically feasible combinations of network elements at forward-looking cost-based rates. The widespread RBOC intransigence in providing network element combinations has no basis in technology or in economics, and is merely a roadblock the RBOCs have created out of legal fiction to limit competitive entry. Imposing pre-conditions such as these is essential if competitors in the SBC and Ameritech regions are going to be able to withstand the combined market power of the new incumbent giant.

B. If the merger is approved, market-opening conditions should be attached, with effective sanctions for non-compliance.

1. If the Commission nevertheless approves this merger, it should consider the BA/NYNEX merger conditions as no more than a floor for guarding against competitive harms. The Commission should supplement these post-merger conditions to ensure that the new SBC-Ameritech cannot use its combined size and market power to discriminate against smaller local exchange competitors.

The Commission should, for example, require SBC-Ameritech to submit *monthly* performance reports, in lieu of the quarterly reports required in the context of the BA-NYNEX

merger.²⁰ Since the new SBC-Ameritech would already be compiling data on a monthly basis under the basic BA-NYNEX conditions, it should not be too much of an additional burden to publish those results on a monthly basis as well. By contrast, a span of even three months can make a substantial difference in deciding whether to enter a market or in attempting to withstand the continuing anti-competitive conduct of an incumbent – especially one like the proposed SBC-Ameritech company, which would have a monopolistic level of market share and bottleneck control of essential facilities across such a large span of the nation.

More stringent reporting requirements, however, are only a means to an end. Reports allow carriers to measure performance, but they cannot prevent SBC-Ameritech from acting in a discriminatory and anti-competitive manner. The Commission should attach conditions compelling the combined SBC-Ameritech to adhere to certain levels of performance in providing competitors with access to unbundled network elements and resold services. For each reporting category imposed, SBC-Ameritech should be required to meet a certain threshold of performance (whether it be a set interval or a specific success rate) so that carriers can determine with certainty when the mega-ILEC is performing in a substandard manner.

While we recognize that the Commission tentatively concluded in its Operations Support Systems rulemaking that it would be "premature" to develop performance standards,²¹ it is only through the adoption of such standards that the reporting requirements can truly provide competitors

²⁰ See *BA/NYNEX Merger Order*, at ¶ Appendix C.1.d. - establishing the requirement that BA/NYNEX submit quarterly performance monitoring reports.

²¹ *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking (rel. Apr. 17, 1998), at ¶125.

with certainty in analyzing the relative performance of SBC-Ameritech. Where the Commission feels that there is insufficient information to develop reasoned performance standards for a particular reporting category, the Commission should require the combined SBC-Ameritech to clearly identify the performance levels and intervals it would provide for itself, and adopt those as default performance standards.²²

2. The Commission should also ensure that the combined SBC-Ameritech cannot evade compliance with these merger conditions, as Bell Atlantic-NYNEX has apparently done.

It will be practically impossible, of course, to undo the merger once it has been completed. (although that might be the only effective sanction). Instead, the Commission should establish a system of reasonable yet strict financial sanctions for failure to adhere to the performance standards incorporated in the merger conditions.

For example, if SBC-Ameritech's performance vis-a-vis a CLEC in any category in which it is required to report falls below the level of performance it provides for its own operations for two consecutive months, the Commission should assess a fine of \$75,000 for each month thereafter that the substandard performance in that category continues. The proposed amount of this fine has a sound basis. In the Southwestern Bell-AT&T interconnection agreement in Texas, Southwestern Bell has already agreed to pay liquidated damages of between \$25,000 and \$75,000 in cases where Southwestern Bell's performance falls below a certain measurement level for two consecutive

²² The Commission should also require periodic independent third-party verification of SBC-Ameritech's OSS to better ensure that performance will be satisfactory going forward.

months.²³ Adopting a performance penalty on the high end of that range in the present context would help ensure that there are adequate disincentives to deter the larger, richer, more powerful combined SBC-Ameritech from engaging in anti-competitive conduct.

Moreover, the Commission should create an entirely separate system of penalties to be imposed should the combined SBC-Ameritech fail to meet other, non-performance related merger conditions. In instances in which the new SBC-Ameritech, for example, fails to make combinations of network elements available to competitors or refuses to provide reports on a monthly basis, the Commission should impose a penalty of \$500 per day for a continuing violation. As in the case of performance breaches, this amount also has a sound basis; 47 U.S.C. § 502 allows the Commission to impose such a fine for each and every day that a person willingly and knowingly violates any Commission rule, regulation, restriction, or condition. By imposing sanctions for these kinds of violations as well, the Commission can be better assured on a going forward basis that it will not encounter the same kind of compliance problems that have given rise to the MCI Complaint against Bell Atlantic.

²³ Interconnection Agreement-Texas between Southwestern Bell Telephone company and AT&T Communications of the Southwest, Inc., Attachment 17, section 1.1.4.3. - setting forth damages of \$75,000 for certain performance breaches.

CONCLUSION

The application for a transfer of control should be denied. Alternatively, the Commission should inspect the applicants' Hart-Scott-Rodino filings, and set the case for an evidentiary hearing.

Respectfully submitted,



Dated: October 15, 1998

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CELLULAR**ONE**

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August 26, 1998

Mr. Neil Cox
President
Ameritech
Information Industry Services
350 North Orleans, Floor 3
Chicago, IL 60654

Dear Neil:

I am writing to you today as a follow-up to our previous conversations and frankly out of an extreme element of frustration. I am begging for your assistance regarding the quality of service we are receiving from Ameritech as it relates to provisioning residential phone service. As you know, Cellular One has been offering residential service since March of this year. Cellular One is resolved in its pursuit of excellence and timely provisioning of residential telephone service to customers who choose Cellular One. We have however, as we have mentioned to you previously, consistently encountered resistance from your organization in our efforts to achieve our goals of exceeding customer expectations.

The percentage of "exceptions" (customer orders which do not meet the Minimum Telephone Service Standards "MTSS") has been rapidly expanding and frankly we are beginning to believe that this apparent disregard for the MTSS is deliberate and designed to harm our resale business. We are committed to competing in the residential telephone arena. Ameritech **MUST** adhere to the MTSS rules. 5.5% of transactions have taken greater than five days. We have tried to work with Ameritech, taken suggested courses of action, modified our procedures and have done whatever Ameritech suggested to facilitate the process.

I have attempted to categorize the different type of errors which we believe must be corrected immediately. We are providing representative examples below of each of these issues for your reference.

- Due Date Assignments. When Cellular One submits an order to Ameritech, we are regularly given initial dates which do not meet the MTSS requirements. This unfortunately hinders competition as our customers wish to be converted or have new lines added to Cellular One in a timely fashion. Exacerbating the issue is, that original promised due dates (which often do not meet minimum requirements) are set aside by your company as a regular part of your procedures and Ameritech then provides a new due date (again, beyond MTSS requirements). This has happened 97 times since March or in 15% of the cases.
- Order Rejection Explanations. When orders are rejected, Ameritech has provided conflicting statements as to the reason (one Ameritech representative will claim an order is incorrect while another will admit an order was rejected in error). Without receipt of accurate information regarding orders, the entire time frame for service provision to the customer is delayed. We have no information that enables us to fix the problem, again impacting the customer.
- Order Rejection in Error, and Corrected by Ameritech. Ameritech's system regularly rejects orders in error and it then defaults to a "manual system". In each instance, this adds unnecessary delay to provisioning the customer's order. The order must be reprovisioned and Ameritech starts a new five day clock all over again. There evidently is an Ameritech system process error that rejects orders incorrectly. This MUST be fixed now!
- Orders Rejected in Error and Not Corrected. We have several issues in which orders have been rejected in error by Ameritech, acknowledged as such by Ameritech, but not removed from Reject Status for days by Ameritech. In each instance, this again adds unnecessary delay to provisioning the customer's order. We have had 178 rejected in the above two categories or 20% of the transactions.
- Confirmation Dates. Cellular One has experienced lengthy lag times (up to several days) between Ameritech's receipt of an order and Ameritech's confirmation of said order and assignment of a due date. As a result, this causes unnecessary delays, particularly if the order is subsequently rejected for any reason. Additionally, a due date may be scheduled by Ameritech and possibly met before Cellular One is provided confirmation that Ameritech has finished or is working on the order. It is imperative that we are kept informed of the status of our orders and that Ameritech provide timely service.

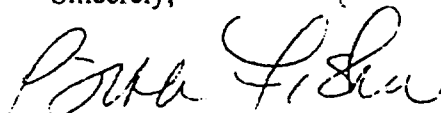
- Customer Service Records. Ameritech has not been providing CSR updates in a timely fashion, hindering Cellular One's efforts to confirm critical details regarding a customer's account. This results in unverifiable records and poor customer service. This has happened six times.
- Notification of Facilities Issues. In instances where postponements are caused by "facilities" issues, Cellular One is not regularly provided information that the completion date has been missed, sometimes, not until our customer calls to complain. There have been 15 occurrences of this. One specific example that we wish to particularly highlight is one where Cellular One submitted an order on July 28, 1998. Ameritech provided a completion date of August 5, 1998, however, the actual completion date by Ameritech was not until August 12, 1998. Ameritech repair technicians were dispatched three times before the order was completed.
- Time Spent Monitoring Ameritech Processes. Cellular One has spent far too much time monitoring and measuring the Ameritech processes. We have two full time employees (40 hours each per week) devoted to monitoring these processes. The processes are too cumbersome and do not appear to be designed to meet the MTSS.
- AntiCompetitive Conduct/Comments. Although we are hopeful that the examples are not sanctioned behavior, they are nonetheless intolerable and must be put to an immediate halt. On the specific customer example where the Ameritech technician was dispatched three times, the customer advised us that one Ameritech technician remarked to her, "that she would not have these problems if she had not left Ameritech" and that the technician made further reference to a "resale environment". We find these remarks particularly intolerable and anti-competitive. Additionally, a potential customer telephoned last week to request an application. When doing so, he mentioned that he had a conversation the day before with an Ameritech technician who told him that the "quality of Cellular One's phone lines and network is bad and that the customer would be dissatisfied with our service". We find these comments incredible since we get our service from your network.
- Use of Resources. We were essentially promised great service by Ameritech regarding fulfillment of orders if only we provisioned our orders through an electronic interface. Cellular One dedicated resources to accomplish this and I am sure you are familiar with the fact that we were operational at the outset. Despite the dedication of resources on our part, Ameritech's position has been that they have up to five business days from receipt of an order to key in information and the five days has nothing to do with the due date. This of course is not correct. The PUCO MTSS clearly states that the five day standard is to complete the order and have service operational.

We are now at the point where we do not believe that Ameritech is sincere or has the intention to correct these deficiencies. To date, the solution has been to invoke penalty payments. That is not an acceptable resolution. It is not in the spirit of providing residential competition in Ohio.

Neil, I know from speaking with you that you have expressed a desire to help make Cellular One successful in the resale arena. At this point in time, it appears that there are not enough people at Ameritech who are committed to that end.

We believe we have no choice but to pursue a facilities based environment. Being in control of the ability to deliver excellent service to customers and control our fate is important to us. To date, we have not received the service levels from Ameritech that enables us to provide the quality customer service we feel is essential. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Fisher", written in a cursive style.

Beth Fisher
Vice President Customer Operations

cc: Patty Flynt, Cellular One
Pamela S. Miller, Esq., Cellular One
Rick Reese, PUCO
Susan Merryman, Ohio Consumers' Counsel

CERTIFICATE OF SERVICE

I, Michael R. Romano, do hereby certify that on this 15th day of October, 1998, I served by first-class, United States Postal Service, postage prepaid, a true copy of the foregoing Comments, upon the following:

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* By Hand